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# **PRELIMINARY DRAFT**

## **No. 3315**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2007 GENERAL ASSEMBLY**

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### **DIGEST**

**Citations Affected:** IC 6-1.1-12-17.9; IC 6-4.1; IC 29-1-8; IC 32-38.

**Synopsis:** Various probate and trust issues. Provides that a trust is entitled to certain property tax deductions for real property owned by the trust if the property is occupied by an individual who has a beneficial interest in the trust, is considered to have a life estate in the real property, and otherwise qualifies for the deduction. Removes a provision that prevents individuals who are adopted as adults after June 30, 2004, from being considered Class A transferees for purposes of the inheritance tax. Increases the Class B transferee inheritance tax exemption amount from \$500 to \$20,000 and the Class C transferee inheritance tax exemption amount from \$100 to \$10,000. Increases from \$1,000 to \$5,000 the maximum amount that may be deducted for purposes of inheritance tax from the value of property interests transferred by a resident decedent for the purchase of a memorial for the decedent. Increases the maximum gross value of a probate estate that may be summarily distributed and closed upon the filing of an affidavit from \$25,000 to \$50,000. Provides that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy issued for the interest in real property if the transfer meets certain conditions.

**Effective:** July 1, 2007.



A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 6-1.1-12-17.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 17.9. A trust is entitled to a deduction under section 9, 11, 13, 14, 16, or 17.4 of this chapter for real property owned by the trust and occupied by an individual if the county auditor determines that the individual:**

**(1) upon verification in the body of the deed or otherwise, has a beneficial interest in the trust;**

**(2) otherwise qualifies for the deduction; and**

**(3) would be considered the owner of the real property under IC 6-1.1-1-9(f).**

SECTION 2. IC 6-4.1-1-3, AS AMENDED BY P.L.238-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. (a) "Class A transferee" means a transferee who is a:**

**(1) lineal ancestor of the transferor;**

**(2) lineal descendant of the transferor;**

**(3) stepchild of the transferor, whether or not the stepchild is adopted by the transferor; or**

**(4) lineal descendant of a stepchild of the transferor, whether or not the stepchild is adopted by the transferor.**

**(b) "Class B transferee" means a transferee who is a:**

**(1) brother or sister of the transferor;**

**(2) descendant of a brother or sister of the transferor; or**

**(3) spouse, widow, or widower of a child of the transferor.**

**(c) "Class C transferee" means a transferee, except a surviving spouse, who is neither a Class A nor a Class B transferee.**

**(d) For purposes of this section, a legally adopted child is to be treated as if the child were the natural child of the child's adopting parent. ~~if the adoption occurred before the individual was totally emancipated. However, an individual adopted after being totally~~**



1 emancipated shall be treated as the natural child of the adopting parent  
2 if the adoption was finalized before July 1, 2004.

3 (e) For purposes of this section, if a relationship of loco parentis has  
4 existed for at least ten (10) years and if the relationship began before  
5 the child's fifteenth birthday, the child is to be considered the natural  
6 child of the loco parentis parent.

7 (f) As used in this section, "stepchild" means a child of the  
8 transferor's surviving, deceased, or former spouse who is not a child of  
9 the transferor.

10 SECTION 3. IC 6-4.1-3-11 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11. The first ~~five~~  
12 ~~hundred twenty thousand~~ dollars ~~(\$500)~~ **(\$20,000)** of property  
13 interests transferred to a Class B transferee under a taxable transfer or  
14 transfers is exempt from the inheritance tax.

15 SECTION 4. IC 6-4.1-3-12 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 12. The first ~~one~~  
17 ~~hundred ten thousand~~ dollars ~~(\$100)~~ **(\$10,000)** of property interests  
18 transferred to a Class C transferee under a taxable transfer or transfers  
19 is exempt from the inheritance tax.

20 SECTION 5. IC 6-4.1-3-13 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 13. (a) For purposes of  
22 this section, the term "property subject to the inheritance tax" means  
23 property transferred by a decedent under a taxable transfer.

24 (b) The following items, and no others, may be deducted from the  
25 value of property interests transferred by a resident decedent under ~~his~~  
26 **the decedent's** will, under the laws of intestate succession, or under a  
27 trust:

28 (1) the decedent's debts which are lawful claims against ~~his the~~  
29 **decedent's** resident estate;

30 (2) taxes on the decedent's real property which is located in this  
31 state and subject to the inheritance tax, if the real property taxes  
32 were a lien at the time of the decedent's death;

33 (3) taxes on ~~the~~ decedent's personal property which is located in  
34 this state and subject to the inheritance tax, if the personal  
35 property taxes are a personal obligation of the decedent or a lien  
36 against the property and if the taxes were unpaid at the time of the  
37 decedent's death;

38 (4) taxes imposed on the decedent's income to date of death, if the  
39 taxes were unpaid at the time of ~~his the decedent's~~ death;

40 (5) inheritance, estate, or transfer taxes, other than federal estate  
41 taxes, imposed by other jurisdictions with respect to intangible  
42 personal property which is subject to the inheritance tax;

43 (6) mortgages or special assessments which, at the time of ~~the~~  
44 decedent's death, were a lien on any of ~~the~~ decedent's real  
45 property which is located in this state and subject to the  
46 inheritance tax;



- (7) ~~the~~ decedent's funeral expenses;
- (8) amounts, not to exceed ~~one five~~ thousand dollars ~~(\$1,000);~~ **(\$5,000)**, paid for a memorial for the decedent;
- (9) expenses incurred in administering property subject to the inheritance tax, including but not limited to reasonable attorney fees, personal representative fees, and trustee fees;
- (10) the amount of any allowance provided to the resident decedent's children by IC 29-1-4-1; and
- (11) the value of any property actually received by a resident decedent's surviving spouse in satisfaction of the allowance provided by IC 29-1-4-1, regardless of whether or not a claim for that allowance has been filed under IC 29-1-14.

(c) The amounts which are deductible under subsection (b)(6) of this section are deductible only from the value of the real property encumbered by the mortgage or special assessment.

SECTION 6. IC 29-1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) If it appears that the value of a decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of:

- (1) ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000);~~ **(\$50,000)**;
- (2) the costs and expenses of administration; and
- (3) reasonable funeral expenses;

the personal representative or a person acting on behalf of the distributees, without giving notice to creditors, may immediately disburse and distribute the estate to the persons entitled to it and file a closing statement as provided in section 4 of this chapter.

(b) If an estate described in subsection (a) includes real property, an affidavit may be recorded in the office of the recorder in the county in which the real property is located. The affidavit must contain the following:

- (1) The legal description of the real property.
- (2) The following statement: "It appears that the decedent's gross probate estate, less liens and encumbrances, does not exceed the sum of the following: ~~twenty-five~~ **fifty** thousand dollars ~~(\$25,000);~~ **(\$50,000)**, the costs and expenses of administration, and reasonable funeral expenses."
- (3) The name of each person entitled to at least a part interest in the real property as a result of a decedent's death, the share to which each person is entitled, and whether the share is a divided or undivided interest.
- (4) A statement which explains how each person's share has been determined.

SECTION 7. IC 29-1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Unless prohibited by order of the court and except for estates being administered by supervised personal representatives, a personal representative or a person acting



on behalf of the distributees may close an estate administered under the summary procedures of section 3 of this chapter by filing with the court, at any time after disbursement and distribution of the estate, a verified statement stating that:

(1) to the best knowledge of the personal representative or person acting on behalf of the distributees the value of the gross probate estate, less liens and encumbrances, did not exceed the sum of:

~~(A) the allowance, if any, provided by IC 29-1-4-1;~~

**(A) fifty thousand dollars (\$50,000);**

(B) the costs and expenses of administration; and

(C) reasonable funeral expenses;

(2) the personal representative or person acting on behalf of the distributees has fully administered the estate by disbursing and distributing it to the persons entitled to it; and

(3) the personal representative or person acting on behalf of the distributees has sent a copy of the closing statement to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ **the personal representative or person acting on behalf of the distributees** is aware and has furnished a full account in writing of ~~his~~ **the** administration to the distributees whose interests are affected.

(b) If no actions, claims, objections, or proceedings involving the personal representative or person acting on behalf of the distributees are filed in the court within three (3) months after the closing statement is filed, the appointment of the personal representative or the duties of the person acting on behalf of the distributees terminate.

(c) A closing statement filed under this section has the same effect as one (1) filed under IC 29-1-7.5-4.

(d) A copy of any affidavit recorded under section 3(b) of this chapter must be attached to the closing statement filed under this section.

SECTION 8. IC 32-38 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

## **ARTICLE 38. TITLE INSURANCE AND TRANSFERS TO CERTAIN TRUSTS**

### **Chapter 1. Application**

**Sec. 1. This article applies to a policy or commitment issued after June 30, 2007.**

### **Chapter 2. Definitions**

**Sec. 1. The definitions in IC 27-7-3-2 apply throughout this article.**

**Sec. 2. "Commitment" means a commitment for title insurance.**

**Sec. 3. "Estate" has the meaning set forth in IC 29-1-1-3.**

**Sec. 4. "Named insured owner" means the person identified in a policy or commitment as the insured owner or the proposed**



insured owner of an interest in real property that is insured or proposed to be insured under the policy or commitment.

Sec. 5. "Personal representative" has the meaning set forth in IC 29-1-1-3.

Sec. 6. "Policy" means a title insurance policy.

Sec. 7. "Power of appointment" means a power of appointment described in IC 32-17-6.

Sec. 8. "Trust" has the meaning set forth in IC 30-4-1-1.

### Chapter 3. Transfers to Certain Trusts

Sec. 1. The trustee of a trust is considered to be the insured owner under a policy or commitment that insures or proposes to insure an interest in real property that is transferred to the trust if:

- (1) the transferee of the interest in real property is the trustee of the trust, the trust was established by the named insured owner, and the transferor is the named insured owner;
- (2) the named insured owner reserves the right to amend or revoke the trust during the named insured owner's lifetime;
- (3) the named insured owner is a natural person; and
- (4) the transfer of the interest in real property is made by the named insured owner personally or by:

(A) the named insured owner's attorney in fact;

(B) the named insured owner's guardian or other similar person in a guardianship or protective proceeding in which the named insured owner is an incapacitated or a protected person; or

(C) the personal representative of the deceased named insured owner's estate under the terms and conditions of the named insured owner's last will and testament;

even if the named insured owner transfers the interest in real property to the trustee described in this section after the effective date of the policy or commitment.

SECTION 9. [EFFECTIVE JULY 1, 2007] Actions taken before July 1, 2007, that would have been valid under IC 6-1.1-12-17.9, as added by this act, are legalized and validated.

SECTION 10. [EFFECTIVE JULY 1, 2007] IC 6-4.1-3-11 and IC 6-4.1-3-12, both as amended by this act, apply to the estate of an individual who dies after June 30, 2007.

SECTION 11. [EFFECTIVE JULY 1, 2007] IC 6-4.1-3-13, as amended by this act, applies to the estate of an individual who dies after June 30, 2007.

SECTION 12. [EFFECTIVE JULY 1, 2007] IC 29-1-8-3 and IC 29-1-8-4, both as amended by this act, apply to the estate of an individual who dies after June 30, 2007.

